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10 COMMUNICATIONS

11 [Special Appearance]

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

20 UNITED STATES,  
21 Plaintiff,  
22 vs.  
23 JEFFREY WELLS, LARRY J. WELLS, and  
24 HENRY M. KAISER,  
25 Defendants.

CASE NO. 2:04-cr-0069-MCE  
**STIPULATION AND PROPOSED ORDER**

Judge: Hon. Morrison C. England, Jr.  
Ctrm.: 3

20 It is hereby stipulated by and between defendants Jeffrey Wells, Larry Wells, and Henry  
21 Kaiser ("Defendants"), the United States of America ("Plaintiff"), SureWest Communications  
22 ("SureWest"), and Ernst & Young LLP ("E&Y"), (Defendants, Plaintiff, SureWest and E&Y are  
23 collectively referred to hereafter as "the Parties" and each may be individually referred to as a  
24 "Party") as follows:

25 1. Purpose of the Stipulation and Protective Order

26 All information provided by SureWest and/or E&Y, and any of their employees and/or  
27 agents, pursuant to any subpoenas issued in this action by one or more of the Defendants  
28 (hereinafter "Responsive Information") shall be treated as confidential and shall be used only for

1 the purpose of this action, and shall not be used for any commercial, financial or personal purpose  
2 by any Party to whom such Responsive Information is disclosed. By execution of this Stipulation  
3 and Proposed Order (the "Protective Order") it is the intent of the Parties to limit access to and  
4 disclosure of any Responsive Information.

5       2. Persons to Whom Responsive Information May Be Disclosed

6       a.       Except as may be otherwise provided by further order of the Court,  
7 Responsive Information shall be disclosed only to (i) the parties in this action; (ii) the parties'  
8 representatives and attorneys in this action, and their support staff; (iii) experts and consultants  
9 retained by the parties' attorneys in this action and their support staff (provided a signed  
10 undertaking in the form of Exhibit A hereto is obtained prior to production of such information;  
11 said undertaking to be maintained by counsel); (iv) the judiciary, its employees and its agents in  
12 this action; (v) court reporters and videographers, and their transcribers, assistants, and employees  
13 in this action; and (vi) individual(s) interviewed by the parties' representatives and attorneys in this  
14 action for the sole purpose of preparing the Plaintiff's case in this action and/or preparing  
15 Defendants' defense to this action (provided a signed undertaking in the Form of Exhibit A hereto  
16 is obtained prior to disclosure of such information to any individual(s), said undertaking to be  
17 maintained by counsel, and further provided that said individual(s) will not be given or retain a  
18 copy of any Responsive Information).

19       b.       Responsive Information may also be disclosed to anyone so authorized by  
20 the prior written consent of SureWest and/or E&Y, or with Court approval, or pursuant to lawful  
21 court order. Before seeking Court approval, the moving party seeking to make the disclosure shall  
22 meet and confer with SureWest and/or E&Y in a good faith effort to obtain SureWest's and/or  
23 E&Y's permission to make the disclosure. To seek Court approval, the moving party seeking to  
24 make the disclosure shall file a noticed motion with the Court for permission to make such  
25 disclosure and shall bear the burden of showing good cause for the disclosure. The Responsive  
26 Information will be treated as such (subject to all the restrictions of this Protective Order) pending  
27 a final determination of any such motion or challenge to a court order.

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c. By the signatures below, the Parties and their counsel hereby agree to be bound by this Protective Order.

3 d. Each person or entity to whom Responsive Information is disclosed subject  
4 to the provisions of this Protective Order hereby submits himself, herself, or itself to the  
5 jurisdiction of this Court for the enforcement of this Protective Order.

### 3. Hearings and Court Proceedings

7 Any Responsive Information that is disclosed in the course of a hearing and/or any court  
8 proceeding is also subject to this Protective Order.

#### 4. Filing Responsive Information With the Court

10 Any Party who intends to file or lodge with the Court documents containing Responsive  
11 Information will do so by requesting such documents be sealed pursuant to and in accordance with  
12 the Federal Rules of Criminal Procedure and this Court's Local Criminal Rules.

## 5. Copies, Extracts and Summaries

14 This Protective Order shall apply to copies, extracts and summaries of Responsive  
15 Information

## 6. Return of Responsive Information

17       Upon the final disposition of the action, including any appeal, writ, review or rehearing,  
18 each document containing Responsive Information, and all copies thereof, shall be returned to the  
19 Party who produced the Responsive Information, upon request, or shall be destroyed, within thirty  
20 (30) days of such a request. However, counsel for each Party may maintain copies of any  
21 pleadings including all exhibits attached thereto. To the extent such pleadings and exhibits  
22 contain Responsive Information, the parties shall continue to treat such pleadings and exhibits in  
23 accordance with the terms of this Protective Order. Counsel for the Party responding to the  
24 request for return of all Responsive Information shall also certify in writing that he or she has  
25 made a diligent search and inquiry regarding any originals and copies of documents containing  
26 Responsive Information and that all have been returned to the requesting Party.

7. Modification of this Protective Order

1 This Protective Order is entered without prejudice to the right of any Party to apply for an  
2 order modifying or limiting this Protective Order, or any provision therein, in any respect. The  
3 Parties may also effect such modifications or limitations by written agreement of all Parties.  
4 Neither the entry of this Order, nor the disclosure of any Responsive Information, shall constitute  
5 evidence or any admission with respect to any issue in the case, and shall not constitute a waiver  
6 of any objections to the disclosure of Responsive Information. Nothing in this Protective Order  
7 shall be construed as waiving any objections by any Party as to the admissibility of a particular  
8 document or testimony into evidence. Moreover, nothing in this Protective Order shall be  
9 construed to require any Party to disclose to any other Party Responsive Information, or to  
10 prohibit any Party from refusing to disclose Responsive Information to any other Party.

## 8. Enforcement of the Protective Order

12 The term of this Protective Order shall survive any settlement, discontinuance, dismissal,  
13 severance, judgment, acquittal, or other disposition of this action, and this Court shall continue to  
14 retain jurisdiction to enforce the terms of this Protective Order.

## 9. Execution of Protective Order

16 This Protective Order may be executed in one or more facsimile counterparts, each of  
17 which shall be deemed an original, and/or with the express consent of each party's counsel.

**SO STIPULATED:**

## LAW OFFICE OF WILLIAM PORTANOVA

By: \_\_\_\_/s/ William Portanova  
William Portanova  
Attorney for Defendant Larry Wells

## LAW OFFICE OF WAYNE ORDOS

By: \_\_\_\_\_/s/ Wayne Ordos \_\_\_\_\_  
Wayne Ordos  
Attorney for Defendant Jeffrey Wells

1 UNITED STATES ATTORNEYS OFFICE  
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3 By: \_\_\_\_\_/s/ Steven Lapham \_\_\_\_\_  
4 Steven Lapham  
5 Attorneys for the United States of America  
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7 HELLER EHRMAN LLP  
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9 By: \_\_\_\_\_/s/ Megan Dixon \_\_\_\_\_  
10 Megan Dixon  
11 Attorneys for Ernst & Young LLP  
12

13 COOPER, WHITE & COOPER LLP  
14

15 By: \_\_\_\_\_/s/ Mark Tuft \_\_\_\_\_  
16 Mark L. Tuft  
17 Andrew Dilworth  
18 Attorneys for SureWest Communications  
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20 **IT IS SO ORDERED.**

21 DATED: December 29, 2005

22   
23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE  
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## EXHIBIT A

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## Form of Confidentiality Certificate

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I, the undersigned, \_\_\_\_\_, do undertake, and certify as follows:

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1. I am employed by \_\_\_\_\_ as a \_\_\_\_\_, and my address is \_\_\_\_\_.

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2. I have received a copy of the Stipulation and Proposed Order entered by the Court in United States v. Jeffrey Wells, et al., Case No. CR S-04-0069-MCE, United States District Court, Eastern District of California, dated \_\_\_\_\_, 2005 (the "Protective Order"). I have carefully read, and I understand, the provisions of the Protective Order.

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3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone other than those persons authorized by the Protective Order, and will not use except as authorized by the Protective Order, any Responsive Information (as that term is defined in the Protective Order), which I receive under the terms of and pursuant to this Protective Order.

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I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and this declaration is executed at \_\_\_\_\_ on \_\_\_\_\_, 2005.

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